

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

CJI PROCESS SYSTEMS
12000 Clark Street
Santa Fe Springs, CA 90670

Employer

Docket Nos. 09-R6D2-1333 through 1336

**DECISION AFTER
RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code and having taken this matter under reconsideration on its own motion, renders the following decision after reconsideration.

JURISDICTION

On April 9, 2009, the Division of Occupational Safety and Health (the Division) issued to CJI Process Systems (Employer) four Citations alleging six violations of Title 8, Cal. Code of Regulations. Employer filed timely appeals contesting all Citations.

This matter came on regularly for a scheduled pre-hearing conference on July 13, 2009, before an Administrative Law Judge (ALJ) for the Board. At that time the parties reached a settlement of all citations which was memorialized in an Order dated July 27, 2009. The summary table attached to the Order reflected the settlement terms. In the Order, the ALJ stated "Good cause having been shown, the above captioned matter is resolved as set forth in the attached summary table." In addition, the Order reflected that the settlement was entered into to avoid protracted litigation and costs associated therewith. The summary table specified the nature of the good cause referred to in the Order as maximizing the reductions for good faith, and for 336k reduction for Citation 2 Item 1. However, the basis for the reclassification of Citation 2 Item 1, and Citation 3, Item 1, from serious to general, was not contained in either the Order or the summary table.

On August 25, 2009, the Board on its own motion ordered reconsideration of the ALJ's Order pertaining to the existence of good cause for reclassifying Citation 2, Item 1, and Citation 3, Item 1.

The Division submitted an Answer to the Order of Reconsideration, dated September 28, 2009. Thus, it appears the Division reviewed its investigation and concluded the evidence would not support a finding of a substantial probability of serious injury to the hand resulting from the hazard addressed by the safety orders referenced in Citation 2, Item 1, and Citation 3, Item 1.

ISSUE

Whether there was good cause for withdrawal of Citation 1, Item 2.

DECISION AFTER RECONSIDERATION

Board Regulation 364.2 states “(a) Upon a showing of good cause, the Appeals Board may dispose of the issues on appeal by granting a written motion of the parties made at any time, or an oral motion of the parties made on the hearing record or in the prehearing conference.” Absent allegations or indications of fraud, the Board has recognized the Division’s prosecutorial discretion to withdraw citations as part of negotiated settlements. (*Northern California Paper Recyclers, Inc*, Cal/OSHA App. 09-2352, Denial of Petition for Reconsideration (Jun. 1, 2010); *California Dept. of Forestry*, Cal/OSHA App. 85-1379, Denial of Petition for Reconsideration (Aug. 28, 1986).) Here, reclassification of the two violations to general was a result of the Division evaluating all of the evidence before it at the time of the prehearing conference. Thereafter, it appears it appropriately exercised its prosecutorial discretion and chose to reclassify the two citations. On this record it is appropriate to accept the agreement and stipulation of the parties. (*E & H 126 Investment Inc.*, Cal/OSHA App. 08-3994, Denial of Petition for Reconsideration (Jul. 30, 2009); see also *County of Sacramento v. Workers’ Comp. Appeals Bd.* (3rd Dist. 2000) 77 Cal.App.4th 1114.)

Therefore, the ALJ’s Order is affirmed and is reinstated, with amendment to the summary table memorializing that the Division concluded the hazard did not create a substantial probability of serious injury, which supports the ALJ’s finding of good cause in accepting the entire negotiated settlement.

CANDICE A. TRAEGER, Chairwoman
ART R. CARTER, Board Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
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